

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 3:13-CR-42
(JUDGE GROH)

TALBERT FOREST DEHAVEN, III,

Defendant.

ORDER GRANTING SUPPLEMENTAL MOTION TO CONTINUE PRE-TRIAL
CONFERENCE AND TRIAL AND DENYING AS MOOT UNOPPOSED MOTION TO
CONTINUE PRE-TRIAL CONFERENCE AND TRIAL

Currently pending before the Court are two motions filed by the Defendant, an Unopposed Motion to Continue Pre-Trial Conference and Trial [Doc. 22] filed on November 4, 2013, and a Supplemental Unopposed Motion to Continue Pre-Trial Conference and Trial [Doc. 27] filed on November 7, 2013. In both of these motions, the Defendant requests that the Court continue the pre-trial conference and trial in this matter until January 2014. Presently, the pre-trial conference is set for November 14, 2013 and trial is set for November 19, 2013.

In his initial motion to continue, the Defendant supported his request for a continuance on two grounds. First, he stated that he had an appointment for reconstructive shoulder surgery scheduled for the day before trial. He asserted that he expected that this surgery would incapacitate him for one week. Second, the Defendant's Counsel asserted that he does not anticipate that he will be ready for trial as he has three other matters that he expects will proceed to trial on November 19,

2013. The Defendant also stated that he waives his right to a speedy trial under the Speedy Trial Act, and that the United States does not oppose his motion for a continuance.

Upon receipt of the initial motion to continue, the Court requested that the Defendant provide the Court with documentation regarding the scheduled surgical procedure.¹ The Defendant thereafter filed his supplemental motion to continue wherein he informed the Court that he does not, as previously stated, have surgery scheduled for the day before trial. Instead, the Defendant's surgery could be scheduled for any time between the date of the supplemental motion and December 30, 2013.

The Defendant's Counsel reasserted in the supplemental motion that he has three other trials scheduled for November 19, 2013. He stated that he "does not believe he can effectively represent four separate defendants at four separate trials all scheduled to commence on the same day," that a continuance would not prejudice the Defendant, and that a continuance would address issues regarding the Defendant's surgery. ([Doc. 27] ¶¶ 5-6.)

Despite the initial inaccuracy regarding the Defendant's surgery, the Court finds good cause to grant the requested continuance as Defendant's Counsel has expressed an inability to represent his client effectively because he has three other trials currently set for the same day.² In doing so, the Court has considered the factors outlined in 18

¹ The Court recommends that Counsel attach such documentation to motions to continue from the outset in the interest of efficiency for both the Court and the parties.

² Currently, the Defendant's Counsel has two cases pending trial on November 19th, one having pled on November 12, 2013. However, the Court recommends that, in the future, Counsel begin preparing for trial earlier as pre-trial conference and trial

U.S.C. § 3161, and finds that the ends of justice served by granting the continuance outweigh the best interest of the public and the Defendant in a speedy trial. Specifically, the Court finds that this time shall be excluded from speedy trial computation because the failure to grant a continuance "would deny counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." See 18 U.S.C. § 3161(h)(7)(B)(iv).

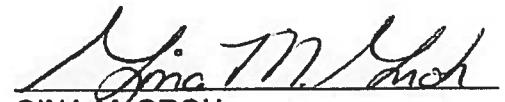
Accordingly, the Court **GRANTS** the Defendant's Supplemental Unopposed Motion to Continue Pre-Trial Conference and Trial. The **Pre-Trial Conference** in this matter is now scheduled for **January 23, 2014 at 9:30 a.m. in the Martinsburg District Judge Courtroom**. The **Trial** in this matter will commence on **January 28, 2014 at 9:00 a.m. in the Martinsburg District Judge Courtroom**.

Further, the Court **DENIES** the Unopposed Motion to Continue Pre-Trial Conference and Trial as **MOOT** because it seeks the same relief as the supplemental motion.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: November 12, 2013.



GINA M. GROH
UNITED STATES DISTRICT JUDGE

dates are provided to Counsel several weeks in advance. Indeed, the Court has a strong interest in keeping scheduled dates certain and may not always construe motions to continue in such a lenient light.